

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GILBERT L. LOAEC 2014 TRUST, et al.,
Plaintiffs,
v.
ROMONA A. DOHENY,
Defendant.

Case No. 19-cv-02078-NC

**ORDER TO SHOW CAUSE RE:
STATEMENT NOTING DEATH
AND WHETHER THE CASE
SHOULD BE STAYED OR
DISMISSED**

On August 16, 2019, the Court ordered plaintiffs Gilbert L. Loaec 2014 Trust (“Trust”), Gilbert L. Loaec, and Yvonne Loaec-Russ¹ to proffer evidence that Yvonne was the trustee of the Trust and was authorized to act as the attorney-in-fact for Loaec. *See* Dkt. No. 23. Plaintiffs responded on August 23, 2019. *See* Dkt. No. 24. In her response, Yvonne asserted that Loaec passed away on June 5, 2019, two months after Plaintiffs filed their complaint. *Id.* ¶ 5.

Under Federal Rule of Civil Procedure 25(a)(2), when a party dies, “[t]he death should be noted on the record.” The decedent’s successor or representative must then move to substitute the deceased party “within 90 days after service of a statement noting the death, [or] the action by . . . the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1).

¹ As with the Court’s prior order, the Court will refer to Yvonne Loaec-Russ by her first name for brevity and clarity.

1 Plaintiffs have not filed a statement noting death nor have they moved to substitute
2 the proper party. Accordingly, the Court ORDERS Plaintiffs to file a statement noting
3 Loaec's death by **August 30, 2019**. If Plaintiffs believe that Loaec's claim is not
4 extinguished by his death, they must file a motion to substitute the proper party by **August**
5 **30, 2019**, or the Court will dismiss Loaec and Yvonne in her capacity as Loaec's attorney-
6 in-fact. *See* Fed. R. Civ. P. 25(a)(1). Plaintiffs must serve that notice and the motion to
7 substitute, if any, on defendant Romona A. Doheny and any interested parties. *See* Fed. R.
8 Civ. P. 25(a)(3).

9 Because this lawsuit essentially seeks to adjudicate the parties' interest in what is
10 now Loaec's estate, it appears that the probate exception to federal subject matter
11 jurisdiction may apply. *See Gonclaves v. Rady Children's Hosp. San Diego*, 865 F.3d
12 1237, 1252 (9th Cir. 2017) ("In sum, the probate exception prevents a federal court from
13 probating a will, administering a decedent's estate, or disposing of property in the custody
14 of a state probate court.") Accordingly, the Court ORDERS the parties to meet and confer
15 and file a joint status report by **September 6, 2019**, addressing whether the Court should
16 stay or dismiss this lawsuit. The Court will not rule on the pending motion to dismiss
17 (Dkt. No. 15) until the jurisdictional questions are clarified.

18 This order discharges the August 16, 2019, order to show cause. *See* Dkt. No. 23.
19 Doheny does not need to respond to that order.

20 **IT IS SO ORDERED.**

21
22 Dated: August 23, 2019



NATHANAEL M. COUSINS
United States Magistrate Judge